IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JOHN SAYBOLT	:	NO. 05-618-2

MEMORANDUM AND ORDER

Gene E.K. Pratter, J. November 9, 2006

INTRODUCTION

The Government has charged John Saybolt in Count I of the indictment at issue here with conspiracy to submit false, fictitious or fraudulent claims in violation of 18 U.S.C. § 286. The Government claims that Mr. Saybolt and others conspired to induce the Internal Revenue Service to remit monies to them on the basis of false, fictitious and fraudulent claims for refunds. Defendant Saybolt has moved to dismiss Count I of the indictment on the ground that it is duplicitous. Specifically, Mr. Saybolt contends that in Count I the Government has improperly alleged two separate conspiracies. The Court disagrees and denies the Motion.

DISCUSSION

Duplicity is the improper joining of distinct and separate offenses in a single count of an indictment. United States v. Dees, 215 F.3d 378 (3d Cir. 2000); United States v. Starks, 515 F.2d 112, 116 (3d Cir. 1975). Duplicitous indictments obscure the specific charges and can violate a defendant's constitutional right to notice of the charges against him. Such indictments may prevent the jury from separately deciding the issue of guilt or innocence with respect to each

particular offense thus creating uncertainty as to whether the defendant's conviction was based on a unanimous jury decision. Moreover, duplicitous indictments raise the risk of prejudicial evidentiary rulings.

Having outlined why duplicitous indictments can prompt concern, the Court notes that duplicity is often not fatal to an indictment. See, e.g., United States v. Sturdivant, 244 F.3d 71, 80 (2d Cir. 2001); United States v. Buchmeier, 255 F.3d 415, 426 (7th Cir. 2001). Indeed, appropriate jury instructions can cure possible duplicity in an indictment. See, e.g., United States v. Hughes, 310 F.3d 557, 560 (7th Cir. 2002); United States v. Weller, 238 F.3d 1215, 1220 (10th Cir. 2001). Here, however, the potential harmlessness of duplicity need not be determined because the challenged count does not fall prey to such a flaw in the first instance.

The indictment issued against Mr. Saybolt charges a conspiracy "to defraud the United States. . .by obtaining and aiding others to obtain the payment and allowance of false, fictitious and fraudulent I.R.S. claims for refunds." (Indictment Count I, ¶ 1.) The "manner and means" allegedly used by the defendants to achieve the objective of the conspiracy are then enumerated in paragraphs 5-7 of Count I in which various transactions undertaken by Mr. Saybolt and his co-defendant are described. The reference in a single count to several crimes, diverse objectives or multiple transactions as the means or manner by which the objectives of a conspiracy were achieved does not render the count duplicitous. Braverman v. United States, 317 U.S. 49, 54 (1942); Dees, 215 F.3d at 380; United States v. Reyes, 930 F.2d 310, 312 (3d Cir. 1991). See also, United States v. Calderin-Rodriguez, 244 F.3d 977, 985 (8th Cir. 2001); United States v. Crisci, 273 F.3d 235, 239 (2d Cir. 2001). Count I in this indictment puts Mr. Saybolt on notice of the conspiracy with which he is charged and the means and manner by which he and his co-

defendant allegedly pursued the objectives of that conspiracy. As drafted the Count does not prompt any of the impermissible risks enumerated above and does not undermine Mr. Saybolt's due process rights.

An Order consistent with this Memorandum follows.

BY THE COURT:

_____

Gene E.K. Pratter
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JOHN SAYBOLT	:	NO. 05-618-2

ORDER

AND NOW, this 9th day of November 2006, upon consideration of Defendant's Motion to Dismiss Count One on Grounds of Duplicity, (Docket No. 40), and the Government's response thereto, (Docket No. 49), Defendant's Motion is **DENIED**.

BY THE COURT:

_____
GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE